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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164764
Party	Defendant The Brinkmann Corporation
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT BRINKMANN'S OPPOSITION TO OPPOSER'S
MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS
APPLICANT'S PRIOR REGISTRATION AFFIRMATIVE DEFENSE**

I.

INTRODUCTION

Pursuant to Rule 56 of the FEDERAL RULES OF CIVIL PROCEDURE and 37 C.F.R. § 2.127(e)(1), Applicant The Brinkmann Corporation ("Brinkmann") respectfully submits this opposition to the motion for partial summary judgment to dismiss Applicant's prior registration affirmative defense filed by Opposer Brink's Network, Incorporated ("Brink's Network").

Opposer Brink's Network willfully ignores the fact that Applicant Brinkmann's prior registration defense is not a traditional *Morehouse* defense directed to Opposer's likelihood of confusion claim. Instead, Applicant Brinkmann's prior registration defense is a modified *Morehouse* defense that is explicitly directed only against Opposer Brink's Network's dilution

claim. The basis for this defense is Opposer's utterly inconsistent assertion of dilution as a basis for the opposition, given that Opposer has failed to challenge Applicant Brinkmann's other registrations for its BRINKMANN or BRINKMANN-formative marks, not to mention numerous third-party registrations of BRINK-formative marks. Opposer Brink's Network's dilution claim is particularly unreasonable and untenable given that Opposer never even opposed Applicant's application to register its BRINKMANN mark for goods in the same class as the opposed goods, which has now been federally registered.

Applicant Brinkmann's prior registration defense to Opposer's dilution claim is a natural and logical extension of a traditional *Morehouse* defense that is fully supported by and consistent with fundamental dilution principles and case law. Just as the Board itself formulated the traditional *Morehouse* defense, the Board should take the lead in extending *Morehouse* to Opposer's dilution claim, rather than waiting for guidance from the Federal Circuit. A modified *Morehouse* defense for dilution is justified because it is absolutely clear that there would be no added harm to Opposer's alleged fame in view of Opposer's failure to object on grounds of dilution to Brinkmann's other registrations of its mark BRINKMANN or any of the numerous third-party registrations of BRINK-formative marks.

Based on the foregoing, Brinkmann submits that the Board should not only deny Opposer's motion, but the Board should *sua sponte* grant summary judgment in Brinkmann's favor on this defense because the relevant facts are undisputed.

II.

STATEMENT OF RELEVANT FACTS

On November 13, 1978, Brinkmann filed an application, Ser. No. 73/193,053, for registration of its trademark BRINKMANN in a slightly stylized form.¹ The application was published on September 16, 1980, and it issued as Reg. No. 1,153,730 on May 12, 1981. The registered goods are “electrical extension cords, brackets, and electric connectors for use therewith,” in International Class 9, citing a date of first use of June 12, 1978 and “charcoal fired and electric roasting, grilling and barbecue cookers for domestic use and portable electric lights and filters, and replacement lamps,” in International Class 11, citing a date of first use of August 24, 1978. The registration is in force, is valid and subsisting, and is owned by Brinkmann; also, it has been declared incontestable under Section 15 of the Trademark Act, 15 U.S.C. § 1065. Brinkmann has continuously used the mark for the recited goods since 1978. No third party, including Brink’s Network, ever filed an opposition to registration.

On October 11, 2000, Brinkmann filed an application, Ser. No. 76/145,244, for registration of its trademark BRINKMANN BACKYARD KITCHEN. The application was published on October 22, 2002 and issued as Reg. No. 2,779,986 on November 4, 2003, with a disclaimer of the words “backyard kitchen.” The registered goods are “combined outdoor grill and kitchen appliance units comprised of gas grills, sinks and coolers,” citing a date of first use of October 31, 2000. The registration is in force, is valid and subsisting, and is owned by Brinkmann; also, it has been declared incontestable under Section 15 of the Trademark Act, 15 U.S.C. § 1065. Brinkmann has continuously used the mark for the recited goods since 2000. No third party, including Brink’s Network, ever filed an opposition to registration.

¹ The BRINKMANN mark in Reg. No. 1,153,730 merely has the final two “N”s joined together.

On January 17, 2003, Brinkmann filed the application at issue in this opposition, Ser. No. 76/483,115, for its trademark BRINKMANN in multiple classes to cover its then-existing lines of goods. The application was published for opposition on October 5, 2004 and contained the following description of goods with dates of first use as follows:

<u>Class</u>	<u>Goods</u>	<u>Date of First Use in Class</u>
4	Charcoal briquettes and wood chunks for use in smoking and grilling food.	Jan. 1979
6	Metal birdbaths; metal compost bins, metal garden hose hangers, and metal tubs and metal flashlight key rings.	Jan. 1979
7	Vacuum cleaners and accessories, namely, brushes and suction nozzles for vacuum cleaners, vacuum cleaner hoses and hose adapters, filters, filter bags for vacuum cleaners, vacuum cleaner extension wands, vacuum cleaner crevice tools, vacuum cleaner dollies, and accessory kits comprising vacuum cleaner brushes, suction nozzles, hoses, vacuum cleaner extension wands and vacuum cleaner crevice tools.	Jan. 1990
8	Hand tools, namely, protractor saw guides and multi-purpose hand tools comprising pliers, knife blades, screwdrivers, hole punches, bottle openers, can openers, fish scalers and files in one unit; hand utensils, namely, meat hooks.	Jan. 1990
9	Home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets; batteries; wall mount brackets for battery chargers and flashlight; cooking thermometers; electrical extension cords; electric connectors; electric converters; electronic mineral and metal detectors, flashlight and spotlight accessories sold together or separately, namely, transmitters, lighter plugs and filter caps.	June 12, 1978
11	Barbecue grills and smokers, gas cookers and gas fryers, combined outdoor gas grills comprised of a grill, side burner, hanging rack in a warming area, kitchen sink and ice bucket; replacement parts and accessories for barbecue grills and smokers and gas cookers and gas fryers sold separately, namely, charcoal lighters and charcoal starters; lighting products, namely, flashlights, spotlights, electric and fluorescent lanterns, rechargeable lights and spotlights, low voltage and solar-powered lights, electric night lights for outdoor work use, underwater and buoy lights used for fishing; flashlight and spotlight replacement parts and accessories sold together, namely, replacement bulbs, nylon and leather carry cases and holster and belt holders; flashlight and spotlight replacement parts and accessories sold separately, namely, replacement bulbs; replacement parts and accessories for barbecue grills, smokers, gas cooker and gas fryers sold separately, namely, drip pans, racks, grates, charcoal pans and water pans; candle lanterns; and portable electric fans.	Sept. 1, 1975

<u>Class</u>	<u>Goods</u>	<u>Date of First Use in Class</u>
12	Wheelbarrows and hand carts for carrying weighted objects and dollies.	Jan. 1990
21	House wares and garden accessories, namely, pails, rinsing tubs, dust pans, metal pans for use as drain pans, watering cans, trash cans, bird feeders.	Aug. 1992
30	Seasonings and spices.	Jan. 1979

Opposer Brink's Network filed a NOTICE OF OPPOSITION on April 1, 2005.

Brink's Network objected to registration of BRINKMANN only in connection with "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets," in International Class 9. (See Opposer Brink's Network's NOTICE OF OPPOSITION, ¶ 1.) The grounds for opposition asserted by Brink's Network were (1) likelihood of confusion under section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) with various marks incorporating BRINK'S; and (2) dilution under section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c), of various marks incorporating BRINK'S. Applicant Brinkmann filed its Answer on May 13, 2005, which included the affirmative defense of laches.

On August 12, 2008, Opposer filed a motion for partial summary judgment to dismiss Applicant's affirmative defense of laches. Applicant Brinkmann opposed Opposer's motion and on September 23, 2008, filed its own motion for partial summary judgment to dismiss Opposer's claim of dilution. The Board issued an Order on March 16, 2009, granting Opposer's motion but denying Applicant's motion.

On May 13, 2009, Opposer filed a motion for leave to file a second amended Notice of Opposition. The second amended Notice of Opposition asserted the following grounds for opposition of Applicant Brinkmann's application: (1) likelihood of confusion under section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) with various marks incorporating

BRINK'S; (2) dilution under section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c), of various marks incorporating BRINK'S; (3) misuse of the federal registration symbol; and (4) fraudulent misrepresentation of material fact.

On August 7, 2009, the Board granted Opposer's motion for leave to file a second amended Notice of Opposition but struck Opposer's fraud claim from the notice of opposition because the Board found that the claim was legally insufficient and futile. Applicant Brinkmann filed its Answer to second amended Notice of Opposition on August 26, 2009.

On August 27, 2009, Applicant Brinkmann filed a motion to divide Applicant's application into two applications, namely (i) a child application containing the goods in International Classes 4, 6, 7, 8, 11, 12, 21, 30 and the unopposed goods in International Class 9; and (ii) a parent application containing the opposed home security products in International Class 9.

Opposer filed a response on September 9, 2009, stating that it did not contest the motion but "reserve[d] the right to object to any reliance by Applicant on the registration of the mark BRINKMANN in International Classes 4, 6, 7, 8, 11, 12, 21 and 30 and the unopposed goods in International Class 9, which issues as a result of the division."

The Board granted the motion to divide on September 16, 2009, and suspended proceedings while the application was referred to the U.S. Patent and Trademark Office's intent-to-use unit for processing of the division into parent and child applications.

Although a notice of divided application was mailed out by the intent-to-use unit on November 10, 2009, the child application, Serial No. 76/979,024, containing the unopposed goods, was not registered until June 8, 2010, as Registration No. 3,797,964.

On June 4, 2010, Opposer filed a motion for leave to file a third amended Notice of Opposition, which sought to (1) delete the fraudulent misrepresentation of material fact claim (notwithstanding the fact that the Board already struck it from the second amended Notice of Opposition), (2) update the Notice of Opposition to reflect the recent change of name of one of Opposer's related companies and (3) assert three additional trademark registrations against Applicant Brinkmann.

On November 18, 2010, the Board granted Opposer's motion for leave to file a third amended Notice of Opposition over Brinkmann's opposition. Applicant Brinkmann filed its Answer on December 20, 2010. In its Answer, Applicant Brinkmann asserted, *inter alia*, the affirmative defense of prior registration against Opposer's dilution claim. Applicant Brinkmann further counterclaimed to cancel three of Opposer's asserted registrations based on abandonment.

Opposer Brink's Network has now moved for partial summary judgment, seeking to dismiss Brinkmann's affirmative defense of prior registration against Opposer's dilution claim.

III.

ARGUMENT

A. Legal Standard for Summary Judgment

Summary judgment is an appropriate method for disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. FED. R. CIV. P. 56(c). A party moving for summary judgment has the initial burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. *Id. See also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). This burden is higher than the preponderance of the evidence burden needed to prevail at final hearing. TBMP § 528.01. A genuine issue with respect to material fact exists if sufficient

evidence is presented that a reasonable fact finder could decide the question in favor of the non-moving party. *Opryland USA Inc. v. Great American Music Show, Inc.*, 23 U.S.P.Q.2d 1471 (Fed. Cir. 1992). Therefore, the court must view all facts in the light most favorable to the non-moving party, and all justifiable inferences are to be drawn in the non-moving party's favor. *Id.* at 1472-73.

B. Material Facts in Dispute

In its memorandum, Opposer Brink's Network set forth material facts that actually support Applicant Brinkmann's position in the present motion, namely, the existence of Applicant Brinkmann's three existing registrations for the identical mark BRINKMANN and the existence of third-party registrations that incorporate the formative BRINK. The remaining "facts" listed below and asserted by Opposer in support of its motion are actually legal argument that is both incorrect and fail to show that Opposer is entitled to summary judgment as a matter of law:

The prior registration defense was established by the decision in *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 407 F.2d 881, 160 USPQ 715 (CCPA 1969), which held that an opposer cannot be 'damaged' within the meaning § 13 of the Federal Trademark Act by the issuance of registration of a mark for particular goods or services if the applicant already owns an existing registration for the same or substantially identical mark for the same or substantially identical goods. As discussed more fully below, Applicant's assertion of this defense is totally misplaced because: (1) the law of the case establishes that the goods described in Registration Nos. 1,153,730 and 2,779,986 are not essentially the same as home security systems and components therefor; (b) the goods described in Registration No. 3,797,964 are fundamentally different from home security systems and components therefor which is the predicate for the division of the opposed application;

and (c) Applicant's law of ownership of the third-party registrations listed in ¶ 28 of the Answer and the fundamental differences between the goods and services covered by those registrations and home security systems and components therefor preclude any reliance thereon in support of the *Morehouse* prior registration defense.

OPPOSER'S MEMORANDUM, p. 4.

Applicant Brinkmann disputes these "facts," the characterization of which is in dispute and are material because they affect the outcome of the case. Applicant Brinkmann points to the following "facts" that Opposer has omitted from its motion and which controverts the "facts" above asserted by Brink's Network:

1. The prior registration defense was not "established" by the CCPA's *Morehouse* decision cited by Opposer. It was established by the Board's decision in *Morehouse Mfg. Corp. v. J. Strickland & Co.*, 150 USPQ 688 (TTAB 1966), which relied on the Board's own precedents, not any decision by the CCPA or other court. The CCPA's *Morehouse* decision simply affirmed the TTAB's holding and rationale for the defense.
2. Applicant Brinkmann's prior registration defense asserted in its Answer to Opposer's Third Amended Notice of Opposition is explicitly directed only to Opposer's dilution claim, not to its likelihood of confusion claim. *See* APPLICANT BRINKMANN'S ANSWER TO OPPOSER'S THIRD AMENDED NOTICE OF OPPOSITION, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS, ¶ 28 at p. 7.

Opposer Brink's Network has either willfully or obtusely characterized its motion as if Applicant Brinkmann is asserting its prior registration defense against Opposer's likelihood of confusion claim. There can be no doubt that Applicant Brinkmann's prior-registration affirmative defense is directed only against Opposer's dilution claim. As more fully explained below, any alleged differences between the goods in Applicant Brinkmann's opposed application and the goods in Applicant Brinkmann's existing registrations, as well as the third-party

registrations, are irrelevant because the “harm” alleged by Opposer does not turn on the similarities or differences between such goods. The fact that Opposer has allowed registration of other marks containing BRINK, regardless of the goods or services at issue, has destroyed any exclusivity of Opposer’s mark BRINK’S that is the *sine qua non* of a dilution claim.

C. Affirmative Defense Based on Failure to Object to Prior Registration

1. The Traditional *Morehouse* Prior Registration Defense is Applicable Only to Oppositions Based on Likelihood of Confusion

In an opposition proceeding based on an alleged ground of likelihood of confusion, an applicant can raise the traditional equitable defense of prior registration, that is, Applicant’s prior registration of the same mark for substantially the same goods or services. *See Morehouse Mfg. Corp. v. J. Strickland & Co.*, 407 F.2d 881, 884, 160 USPQ 715, 717 (CCPA 1969). The rationale for requiring that the marks be the same and that the goods or services be substantially the same is that no added damage to the opposer will result by issuing a registration to an applicant who already has a substantially similar existing registration. *Id.* This makes sense in an analysis of likelihood of confusion, in which the key dispositive factors are typically a comparison of (1) the similarity of the marks and (2) the similarity of the goods and services between an opposer and an applicant. *See, e.g., Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ.2d 1001, 1003 (Fed. Cir. 2002) (the likelihood of confusion analysis considers all *DuPont* factors but “may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the goods.”).

2. A Modified Form of *Morehouse* Prior Registration Defense Applies To Opposer Brink’s Network’s Dilution Claim

In contrast, in an opposition based on an alleged ground of dilution, similarity of the goods is irrelevant. Dilution law is intended to protect a trademark owner’s mark from

dilution of the mark's value and uniqueness. *Moseley v. V Secret Catalogue Inc.*, 537 U.S. 418, 429 (2003). A *Morehouse* prior registration defense asserted against a dilution claim, then, need not focus on the similarity of the goods between the prior registration and the current application either.

Section 43(c)(1) of the Trademark Act provides:

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

15 U.S.C. § 1125(c)(1).

Dilution by blurring is an association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. 15 U.S.C. § 1125(c)(2)(B). In other words, “[d]ilution refers to the whittling away of the value of a trademark when it’s used to identify different products.” *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894, 903 (9th Cir. 2002). In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

- (i) the degree of similarity between the mark or trade name and the famous mark;
- (ii) the degree of inherent or acquired distinctiveness of the famous mark;
- (iii) the extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark;
- (iv) the degree of recognition of the famous mark; and

(v) whether the user of the mark or trade name intended to create an association with the famous mark;

(vi) any actual association between the mark or trade name and the famous mark.

15 U.S.C. § 1125(c)(2)(B).

Significantly, similarity of the respective goods or services is not a listed factor.

For dilution, “use” by a defendant refers to any use in commerce, not just confusingly similar use or the specific use objected to by a plaintiff. *See Enterprise Rent-A-Car Co. v. Advantage Rent-A-Car, Inc.*, 330 F.3d 1333, 1336 (Fed. Cir. 2003); *Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002, 1013 (9th Cir. 2004) (holding that any commercial use of a famous mark in commerce is arguably a diluting use that fixes the time by which famousness is to be measured).

This makes sense, because an analysis of “association” under dilution is not the same as “confusion” under likelihood of confusion; otherwise, a dilution cause of action would be redundant of an infringement action. *See* 4 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 24:116 at 24-342 (4th ed.). Under the Trademark Act, “‘association’ in the realm of antidilution law means that the ordinary person on encountering the junior user’s mark will think of the senior user’s famous mark. Or in other words, the accused mark calls to mind or conjures up the senior user’s famous mark.” *Id.* This is irrespective of similarities between the respective goods or services at issue. *Id.* at 24-341, fn. 4 (“Under this test, not just any mental association will suffice. It must be an association that arises from the similarity or identity of the two marks, as opposed to an association that arises because of product similarities or competition between the owners of the two marks, or for some other reason,” *citing Testimony of Anne Gundelfinger, President, International Trademark Association, before House*

Subcommittee on Courts, the Internet and Intellectual Property, Committee on the Judiciary, February 17, 2005 (109th Cong., 1st Sess), 2005 WL 408425.).

Although section 43(c) of the Trademark Act makes clear that dilution can apply regardless of the presence or absence of actual or likely confusion or of competition, it is clear that the intent of Congress in enacting the dilution laws was to protect famous marks from being harmed by an association with different sources, especially where the goods and services are dissimilar from the trademark owner's goods and services. H.R. Rep. No. 104-374, at 4 (1995) ("the use of DUPONT shoes, BUICK aspirin, and KODAK pianos would be actionable under this legislation."); *Mattel*, 296 F.3d at 903 ("[f]or example, Tylenol snowboards, Netscape sex shops and Harry Potter dry cleaners would all weaken the commercial magnetism of these marks and diminish their ability to evoke their original associations. These uses dilute the selling power of these trademarks by blurring their uniqueness and singularity, and/or tarnishing them with negative associations." (internal quotations and citations omitted)); *The Sports Auth. Inc. v. Prime Hospitality Corp.*, 89 F.3d 955, 965-66 (2d Cir. 1996) ("A cause of action for trademark dilution is meant to cover those situations where the public knows that a defendant is not connected to or sponsored by the plaintiff, but 'the ability of [the plaintiff's] mark to serve as a unique identifier of the plaintiff's goods or services is weakened because the relevant public now also associates that designation with a new and different source.'" quoting 3 MCCARTHY, § 24.13[1][b], at 24-108); *L.L. Bean v. Drake Publ'g Inc.*, 811 F.2d 26, 31 (1st Cir. 1987) ("The law of trademark dilution has developed to combat an unauthorized and harmful appropriation of a trademark by another for the purpose of identifying, manufacturing, merchandising or promoting dissimilar products or services."); *Holiday Inns, Inc. v. Holiday Out in America*, 481 F.2d 445, 450 (5th Cir. 1973) ("Dilution is a concept most applicable where a subsequent

user uses the trademark of a prior user for a product so dissimilar from the product of the prior user that there is no likelihood of confusion of the products or sources, but where the use of the trademark by the subsequent user will lessen the uniqueness of the prior user's mark with the possible future result that a strong mark may become a weak mark.”).

The right to stop infringement under likelihood of confusion is the right to protect a mark's ability to identify specific products or services as coming from a particular source. The right to stop dilution, in contrast, is the right to protect a famous mark's ability to identify an unique source. It stands to reason, then, that in an opposition proceeding based on an alleged ground of *dilution*, an applicant who owns a prior registration for the same mark, *regardless of the goods or services*, cannot cause any additional “harm” to an opposer's alleged fame because the prior registration has presumably already harmed whatever alleged “uniqueness” of the source that opposer is trying to protect. For purposes of dilution, the traditional *Morehouse* prior registration defense that requires similarity of the marks and substantially similar goods and services in a likelihood of confusion analysis should be modified to delete the “substantially similar goods or services” prong, because this requirement is simply irrelevant in the dilution context.

3. The Board Should Apply a Modified *Morehouse* Prior Registration Defense to Opposer's Dilution Claim

Applicant Brinkmann acknowledges that this may be a case of first impression in the Trademark Trial and Appeal Board. Nevertheless, Applicant urges the Board to consider the substantive legal merits of Applicant's argument, without rote application of the traditional likelihood of confusion *Morehouse* prior registration defense to the Opposer's dilution claim.

a. **Opposer Brink's Network's Objections Are Baseless and Are Irrelevant Because Opposer Cannot Suffer Any Additional "Harm"**

Opposer Brink's Network alleges that Applicant Brinkmann's prior registration defense is unavailable because (1) Applicant's reliance on its prior Reg. Nos. 1,153,730 and 2,779,986 is precluded by the law of the case doctrine; (2) the goods in Applicant's Reg. No. 3,797,964 are different from the goods in the opposed application; (3) Applicant does not own the third-party registrations asserted in Applicant's Answer; and (4) the goods or services identified in the third-party registrations are different from those of the goods in the opposed application. Opposer further argues that a number of the third-party registrations should not be considered because they are registered on the Supplemental Register or have been cancelled as of the filing date of Applicant's Answer.

All of Opposer's arguments regarding differences between goods or services are irrelevant in the context of its dilution claim. An infringement claim under likelihood of confusion is different from a dilution claim:

Infringement protects the uniqueness of products associated with a mark. . . . Dilution recognizes that a mark's value stems not only from its ability to identify specific products but also from its ability to identify a specific source. . . . In particular, harm to the distinctiveness of a mark could occur if a junior user was successful in identifying that mark with a source other than the senior user even though no consumer would be confused that the senior user's products emanated from or were sponsored by that source.

Shaeffer, *Trademark Infringement and Dilution are Different – It's Simple*, 100 TMR 846 (2010) (original emphasis). If in fact Opposer Brink's Network is trying to protect an alleged unique identification of source in its BRINK'S marks, that horse long ago left the barn because

Opposer's BRINK'S marks are not the only marks containing BRINK registered in the U.S. Patent and Trademark Office, regardless of the goods or services registered in connection with those marks. At a minimum, Applicant Brinkmann's two pre-existing registrations for BRINKMANN (Reg. No. 1,153,730) and BRINKMANN BACKYARD KITCHEN (Reg. No. 2,779,986) and its new registration for BRINKMANN (Reg. No. 3,797,964) mean that as a matter of law, Opposer Brink's Network cannot possibly suffer any additional alleged "harm" with the additional registration of another BRINKMANN mark. The various third-party registrations for the formative BRINK have presumably "diluted" Opposer's mark even further. Simply put, BRINK'S is not a unique mark, if it ever was.²

b. Applicant Brinkmann is Not Precluded by Law of the Case Doctrine from Asserting Reg. Nos. 1,153,730 and 2,779,986

Opposer argues that under "law of the case" doctrine, Applicant Brinkmann cannot rely on its prior registrations, Reg. Nos. 1,153,730 and 2,779,986, because of the Board's March 16, 2009 Order ruling that the goods in those registrations are not substantially the same as the goods in the opposed application. The Board's Order ruled that Applicant could not rely on those registrations to establish a laches defense. Opposer cites various case law and the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP")³ to argue that a decision rendered in an earlier stage of the same litigation becomes law of the case, or precedent,

² Since "Brink" is the surname of the founder of Opposer's related company Brink's, Incorporated (*see* <http://www.brinksinc.com/History.aspx>), it is highly doubtful that BRINK'S has ever been a unique mark across all classes of goods and services, much less unique as against other surname marks such as BRINKMANN and BRINK-formative marks. *See* 4 MCCARTHY § 24:116 at 24-345 (coined term KODAK is unusual enough that KODAK candy bars would likely cause an association with KODAK photo equipment, but query whether FORD candy bars would cause association with FORD vehicles).

³ Opposer's motion cites to TBMP § 101(3). Applicant Brinkmann presumes this is a typographical error and that Opposer is referring to TBMP § 101.03.

to be followed in successive stages of the same litigation. Opposer, however, misinterprets the word “decision” and its understanding of “law of the case” is fundamentally misguided.

It is well settled that law of the case doctrine only applies to final decisions, not interlocutory decisions. *See Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 12 & n. 14 (1983) (“every order short of a final decree is subject to reopening at the discretion of the district judge”). Moreover, as noted by the Supreme Court in *Moses H. Cone Mem. Hosp.*, a court can always reconsider a prior interlocutory decision if it is “convinced that [its prior decision] is clearly erroneous and would work a manifest injustice.” *Agostini v. Felton*, 521 U.S. 203, 204 (1997), quoting *Arizona v. California*, 460 U.S. 605, 618, n.8 (1983). The only type of Board decision which may be appealed is a final decision, *i.e.*, a final dispositive ruling that ends litigation on the merits, not an interlocutory decision such as a partial summary judgment decision. TBMP § 901.02(a); *Copelands’ Enterprises Inc. v. CNV Inc.*, 887 F.2d 1065, 12 USPQ.2d 1562, 1565 (Fed. Cir. 1989) (appeal premature because Board only granted partial summary judgment and denied summary judgment on other issues, such that appealed issues did not result in disposition of the case). Opposer Brink’s Network is dead wrong to suggest that the Board must follow its March 16, 2009 Order in deciding the current summary judgment motion. The Board still has jurisdiction of this proceeding and it is free to revisit and overturn its interlocutory decision if it concludes that the prior decision was incorrect and unjust.

In this regard, Applicant Brinkmann respectfully submits that the Board ruled incorrectly in the Board’s Order of March 16, 2009. The Board did not sufficiently consider the distinction between likelihood of confusion and dilution. Among other things, the Board stated that Applicant could not rely on its prior registrations for its laches defense because the goods in the opposed application were different. But Applicant respectfully reiterates that for an equitable

defense of prior registration or of laches, any difference in goods does not matter, because likelihood of confusion and dilution are two distinct causes of action and dilution does not hinge on the similarities between the goods. The Board should give due consideration to this distinction, and not make the same egregious error that it did in analyzing Applicant's laches defense.

c. **Applicant Brinkmann's Assertion of the Various Third-Party BRINK Registrations is Logical and Appropriate**

Opposer Brink's Network also argues that Applicant Brinkmann cannot rely on third-party registrations for its prior registration defense because Applicant does not own the third-party registrations and the registered goods and services are different from home security products. Opposer also notes that three of the cited registrations have been cancelled or are only registered on the Supplemental Register. Opposer's argument completely misses the underlying logic of Applicant Brinkmann's prior registration defense. There simply cannot be any "dilution" of an already diluted mark, regardless of who owns the prior registrations or what the goods or services are. These considerations are irrelevant in analyzing dilution. A decision by U.S. Court of Appeals for the First Circuit has made this quite clear:

Finally, Astra argues that even though there are over 100 registrations of the mark "ASTRA," its mark is unique and individual in the medical field and this uniqueness will suffer from Beckman's use of the mark. It contends that the other registrations have not already diluted its mark because they are in unrelated fields. We have already noted that, while the Beckman analyzer and Astra products may be in the same broad health care field, there is sufficient dissimilarity to prevent confusion. For the same reasons, there is sufficient dissimilarity to prevent dilution. If the other registrations and uses of the "ASTRA" mark have not already diminished the uniqueness of Astra's mark, Beckman's use

of it on its analyzer will not diminish it, either. Therefore, we hold that no genuine issue of material fact has been raised relating to trademark dilution.

Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc., 718 F.2d 1201, 1210, 220 USPQ 786, 793 (1st Cir. 1983) (emphasis added). Opposer Brink's Network is in the same futile position as the plaintiff in *Astra Pharmaceutical Products*. The dozens of third-party registrations incorporating BRINK amply demonstrate that Opposer's mark is already "diluted." Applicant Brinkmann's existing registrations and current application cannot "dilute" Opposer's mark any further. The fact that several of the third party registrations are registered on the Supplemental Register merely emphasizes the fact that BRINK'S is hardly a strong or unique mark.

And for the record, Applicant Brinkmann points out that the three cancelled third-party registrations objected to by Opposer Brink's Network were all cancelled in 2010. *See* Declaration of Kristin D'Andrea in Support of Opposer's Motion, ¶ 5 and Exh. E. Those dates are well subsequent to the August 26, 2009 filing date of Applicant Brinkmann's Answer to Opposer's second amended Notice of Opposition, which is when these third-party registrations were first asserted by Applicant Brinkmann. If the Board had properly denied Opposer's motion for leave to file a third amended Notice of Opposition, Opposer would not have had an opportunity to make this argument. In fact, Applicant Brinkmann can point to other "diluting" third-party BRINK-formative registrations that were registered as of April 1, 2005, when this proceeding was first instituted, but have since been cancelled in the six frustrating years that this proceeding has been pending. (*See* Hwang Decl., ¶¶ 4-15 & Exh. 1-12 thereto, consisting of true and correct copies of 12 cancelled BRINK-formative registrations issued by the U.S. Patent and Trademark Office that were registered as of April 1, 2005.) If Opposer can continue to delay this

proceeding long enough, perhaps all “diluting” third-party BRINK-formative registrations will be canceled. Opposer Brink’s Network should not be rewarded for its dilatory tactics, resulting in prolonged delays of this proceeding. The Board should properly consider these third-party registrations along with the other third-party registrations asserted by Applicant.

d. The Trademark Trial and Appeal Board Has Always Looked Beyond the Class of Goods or Services At Issue

Opposer Brink’s Network has tacitly conceded its dilution claim by the very fact that it filed its notice of opposition against only certain goods in Applicant’s pending application. Not only did Opposer fail to oppose the mark BRINKMANN in other classes of goods, Opposer failed to oppose all of the goods even in the same class. Applicant Brinkmann respectfully submits that the Board has not fully appreciated the significance of Opposer’s actions. Specifically, the Board stated the following when considering Applicant Brinkmann’s laches defense:

[W]e find unpersuasive applicant’s argument that opposer cannot prevail on its dilution claim because it opposes registration of BRINKMANN for only some of applicant’s identified goods. Applicant cites no case law in support of its position, no such requirement is imposed, and the USPTO treats each international class of goods or services in a multi-class application as a separate application.

Board’s March 16, 2009 ORDER at p. 6.

Applicant respectfully submits that the Board’s refusal to consider the relevance of Applicant’s other classes of goods, even the same class of goods for different products, is an artificial construct that is inconsistent with the trademark laws and regulations. The U.S. Patent and Trademark Office does not always treat different classes of goods or services separately.

Section 30 of the Trademark Act provides that, “[t]he Director may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant’s or registrant’s rights.” 15 U.S.C. § 1112 (emphasis added). The Court of Appeals for the Federal Circuit has noted that the classification system is primarily for the facilitation of searching for trademarks. *Jean Patou, Inc. Theon, Inc.*, 9 F.3d 971, 975, 29 USPQ.2d 1771, 1774 (Fed. Cir. 1993) (reversing TTAB’s “incongruous” decision sustaining opposition for goods in Class 3 but dismissing opposition for the same goods in Class 5, finding that “classification is wholly irrelevant to the issue of registrability under section 1052(d).”). The Trademark Trial and Appeal Board has expressly held that the classification system does not control whether goods or services are considered similar or related for purposes of a likelihood of confusion test. *INB Nat’l Bank v. Metrohost Inc.*, 22 USPQ.2d 1585, 1586 (TTAB 1992) (likelihood of confusion analysis cannot be restricted by the artificial boundary created by the classification system, which is used purely as a matter of convenience).

Furthermore, in a likelihood of confusion analysis, the fame or strength of an opposer’s mark is not limited only to the goods or services on which it has been used, but rather can extend to goods or services that are not closely related. *Recot, Inc. v. Becton*, 214 F.3d 1322, 1327-28, 54 USPQ.2d 1894, 1897-98 (Fed. Cir. 2000) (stating that “fame of the mark is a dominant factor in the likelihood of confusion analysis for a famous mark, independent of the consideration of the relatedness of the goods.”).

The foregoing cases demonstrate that the U.S. Patent and Trademark Office is obligated to “look at the big picture” when analyzing likelihood of confusion. It would be illogical of the Board, then, to disregard the existence of Applicant Brinkmann’s prior

registrations for the same mark when analyzing dilution. How can it be said that Applicant's present application for home security products dilutes Opposer's mark, if Applicant three existing registrations for the same mark, one in the same class of goods as the present application, do not? Since Opposer Brink's Network's ground for opposition based on alleged dilution does not depend on use of the BRINKMANN mark on similar or related goods, the affirmative defense of prior registration based on Applicant Brinkmann's pre-existing registrations is applicable to a dilution claim regardless of whether the goods in the pre-existing registrations are different from the goods in the opposed application.

4. The Board Should Not Shy Away From Deciding a Case of First Impression, Just as the Board Did Not Shy Away in the *Morehouse* and Prior Cases

It is tempting for the Board to mechanically cite to the CCPA's *Morehouse* decision and summarily conclude that the classic *Morehouse* prior registration defense does not apply here. The Board would be wrong to do so. Applicant Brinkmann respectfully reminds the Board that it was the Board itself, not a court, that established the *Morehouse* defense. The CCPA decision routinely cited for the *Morehouse* defense was merely an affirmance of the Board's own holding and rationale in *Morehouse Mfg. v. J. Strickland & Co.*, 150 USPQ 688 (TTAB 1966), decided by Board members Leach, Waldstreicher and Lefkowitz. The Board's decision in *Morehouse*, in turn, was premised on the earlier decision by the same Board members in *Artichoke Industries, Inc. v. Regina Grape Products Co.*, 138 USPQ 687, 688 (TTAB 1963) ("If opposer has not been damaged by this [prior] registration, it is not seen how it could be harmed by the issuance of a registration on the involved application so long as said registration remains in effect."). *See Morehouse*, 150 USPQ at 694. The *Artichoke* decision, in turn, was premised on yet earlier TTAB decisions in *Eastern Metals Research Co., Inc. v. Hunter Spring Company*, 119 USPQ 448 (TTAB 1958), and *Scudder Food Products, Inc. v. Southern Food*

Distributors, 119 USPQ 450 (TTAB 1958), and a Commissioner's decision in *Standard Motor Products, Inc. v. Standardized Products Company*, 107 USPQ 147 (Comr. 1955).

The point is that the *Morehouse* defense was the creation of the Board without any prior court precedent. Clearly the Board is not constrained by the absence of precedent, either from the Federal Circuit or even the Board itself, to set new precedent that establishes a logical, legally justified and common sense extension of the *Morehouse* defense. Applicant Brinkmann urges the Board to do so.

IV.

CONCLUSION


Applicant Brinkmann asserted its prior registration defense in its Answer filed on August 26, 2009, well over a year ago. Opposer Brink's Network has been aware of the defense all this time, and yet once again, and on the eve of discovery cut-off, Opposer Brink's Network has filed yet another motion that does nothing to advance this proceeding to trial. Opposer Brink's Network has again delayed the present proceeding, which has already been pending for almost six years. This is an abuse of motion practice before the Board.

It is patently obvious that Opposer Brink's Network merely tacked on its dilution claim to its likelihood of confusion claim as a backstop measure or afterthought, with no real consideration given to the fact that likelihood of confusion and dilution are two distinct causes of action. If Opposer Brink's Network really believed that dilution was even remotely a valid basis for opposition, Opposer Brink's Network should have objected to Applicant's other registrations for BRINKMANN, should have opposed all of the goods in Applicant Brinkmann's multi-class application, and should have objected to registration of other third-party BRINK marks. That Opposer did not do so speaks volumes about its bad faith in asserting its dilution claim. Opposer's dilution claim has no valid legal basis in light of Applicant Brinkmann's prior

registration defense.

For all of the foregoing reasons, Applicant Brinkmann has demonstrated that Opposer Brink's Network is not entitled to judgment as a matter of law on Applicant Brinkmann's prior registration defense. Accordingly, Applicant Brinkmann respectfully requests that the Board deny Opposer's motion for summary judgment and instead *sua sponte* grant summary judgment in Brinkmann's favor dismissing Opposer's dilution claim.

Dated: February 9, 2011



Gary A. Clark
Susan Hwang
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Tel.: (213) 620-1780
Fax: (213) 620-1398

Attorneys for Applicant
THE BRINKMANN CORPORATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

DECLARATION OF SUSAN HWANG UNDER 37 C.F.R. § 2.20

I, Susan Hwang, hereby declare as follows:

1. I am an associate at the law firm of Sheppard, Mullin, Richter & Hampton LLP, counsel of record for Applicant The Brinkmann Corporation.
2. I make this declaration in connection with opposition proceeding No. 91164764 pending in the U.S. Patent and Trademark Office. Except as otherwise stated, I have personal knowledge of the facts set forth in this declaration and am competent to testify to those facts.
3. Attached as Exhibit 1 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 828,750 for the mark BRINKMANN registered on May 16, 1967 and canceled on February 23, 2008.
4. Attached as Exhibit 2 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 1,051,424 for the mark HANS BRINKER registered on October 26, 1976 and canceled on July 28, 2007

5. Attached as Exhibit 3 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 1,367,970 for the mark HANS BRINKER registered on October 29, 1985 and canceled on August 5, 2006.

6. Attached as Exhibit 4 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 1,423,159 for the mark BRINKHOFF'S NO. 1 & Design registered on December 30, 1986 and canceled on October 6, 2007.

7. Attached as Exhibit 5 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 1,425,876 for the mark HANS BRINKER registered on January 20, 1987 and canceled on October 27, 2007.

8. Attached as Exhibit 6 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 1,949,013 for the mark WILLIAN BRINKS HOFER GILSON & LIONE & Design registered on January 16, 1996 and canceled on October 21, 2006.

9. Attached as Exhibit 7 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 2,207,619 for the mark BRINK & Design registered on December 1, 1998 and canceled on July 4, 2009.

10. Attached as Exhibit 8 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 2,207,620 for the mark BRINK registered on December 1, 1998 and canceled on July 4, 2009.

11. Attached as Exhibit 9 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 2,343,069 for the mark ON THE BRINK registered on April 18, 2000 and canceled on January 20, 2007.

12. Attached as Exhibit 10 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 2,525,512 for the mark BRINKER CAPITAL VARIABLE ANNUITY registered on January 1, 2002 and canceled on October 4, 2008.

13. Attached as Exhibit 11 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 2,637,752 for the mark BRINKLEY registered on October 15, 2002 and canceled on May 23, 2009.

14. Attached as Exhibit 12 is a true and correct copy of a TARR printout from the U.S. Patent and Trademark Office's website for Registration No. 2,640,512 for the mark BRINKSTER registered on October 22, 2002 and canceled on May 30, 2009.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.

Date: February 9, 2011

By: _____

A handwritten signature in black ink, appearing to read 'S. Hwang', written over a horizontal line.

SUSAN HWANG

Exhibit 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:04:00 ET

Serial Number: 72242796 Assignment Information Trademark Document Retrieval

Registration Number: 828750

Mark (words only): BRINKMANN

Standard Character claim: No

Current Status: This registration was not renewed and therefore has expired.

Date of Status: 2008-02-23

Filing Date: 1966-04-06

Transformed into a National Application: No

Registration Date: 1967-05-16

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2002-02-25

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. MARTIN BRINKMANN AKTIENGESELLSCHAFT

Address:

MARTIN BRINKMANN AKTIENGESELLSCHAFT

Zählerweg 4

6300 Zug

Switzerland

Legal Entity Type: Joint Stock Company

State or Country Where Organized: Fed Rep Germany

GOODS AND/OR SERVICES

U.S. Class: 017 (International Class 034)

Class Status: Expired

CIGARETTES**Basis:** 44(e)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Section 2(f)**Prior Registration Number(s):**

694043

Foreign Registration Number: 419969**Foreign Registration Date:** 1930-06-17**Country:** Fed Rep Germany

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-02-23 - Canceled Section 8 (10-year)/Expired Section 9

2005-11-30 - TEAS Change Of Owner Address Received

2003-02-21 - TEAS Change Of Correspondence Received

1987-05-16 - First renewal

1987-03-18 - Section 9 filed/check record for Section 8

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Antonio Borrelli

Cowan, Liebowitz & Latman, P.C.

1133 Avenue of the Americas

New York NY 10036

Exhibit 2

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:04:12 ET

Serial Number: 73063254 Assignment Information Trademark Document Retrieval

Registration Number: 1051424

Mark (words only): HANS BRINKER

Standard Character claim: No

Current Status: This registration was not renewed and therefore has expired.

Date of Status: 2007-07-28

Filing Date: 1975-09-17

Transformed into a National Application: No

Registration Date: 1976-10-26

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-11-02

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. K. VAN BOURGONDIE & SONS, INC.

DBA/AKA/TA/Formerly: DBA HANS BRINKER HORTICULTURAL PRODUCTS

Address:

K. VAN BOURGONDIE & SONS, INC.

245 ROUTE 109

BABYLON, NY 11702

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 031

Class Status: Expired
BULBS AND PLANTS
Basis: 1(a)
First Use Date: 1975-06-26
First Use in Commerce Date: 1975-06-26

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-11-02 - Case File In TICSRS
2007-07-28 - Canceled Section 8 (10-year)/Expired Section 9
1996-12-18 - First renewal 10 year
1996-10-23 - Section 9 filed/check record for Section 8
1982-08-27 - Section 8 (6-year) accepted & Section 15 acknowledged

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
B PARKER LIVINGSTON JR

Correspondent
B PARKER LIVINGSTON JR
BURNS DOANE SWECKER & MATHIS LLP
PO BOX 1404
ALEXANDRIA VA 22313-1404

Exhibit 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:05:29 ET

Serial Number: 73535997 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1367970

Mark (words only): HANS BRINKER

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2006-08-05

Filing Date: 1985-05-06

Transformed into a National Application: No

Registration Date: 1985-10-29

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: M4D -TMO Law Office 113 - Docket Clerk

Date In Location: 2006-01-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. TURKSTRA B.V.

Address:

TURKSTRA B.V.

P.O. BOX 3

ZAANDAM

Netherlands

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Netherlands

GOODS AND/OR SERVICES

International Class: 030

Class Status: Section 8 - Cancelled

BISCUITS AND COOKIES

Basis: 1(a)

First Use Date: 1984-10-15

First Use in Commerce Date: 1984-10-15

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-08-05 - Canceled Section 8 (10-year)/Expired Section 9

2006-01-11 - Case File In TIGRS

2003-04-15 - TEAS Change Of Correspondence Received

1992-01-14 - Section 8 (6-year) accepted

1991-09-09 - Section 8 (6-year) filed

1985-10-29 - Registered - Principal Register

1985-08-20 - Published for opposition

1985-07-21 - Notice of publication

1985-06-18 - Approved for Pub - Principal Register (Initial exam)

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

HAROLD TRAUB

Correspondent

Bruce S. Londa

Norris, McLaughlin & Marcus, P.A.

220 E.42nd Street

New York NY 10017

Phone Number: 212-808--0700

Fax Number: 212-808-0844

Domestic Representative
HAROLD TRAUB

Exhibit 4

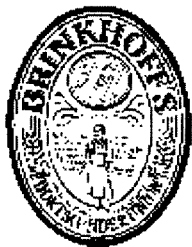
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:05:40 ET

Serial Number: 73550738 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1423159

Mark



(words only): BRINKHOFF'S NO. 1

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2007-10-06

Filing Date: 1985-07-29

Transformed into a National Application: No

Registration Date: 1986-12-30

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2006-09-26

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. BRAU UND BRUNNEN AG

Address:

BRAU UND BRUNNEN AG

DORTMUND

Fed Rep Germany

Legal Entity Type: Joint Stock Company

State or Country Where Organized: (NOT AVAILABLE)

GOODS AND/OR SERVICES

International Class: 032

Class Status: Section 8 - Cancelled

BEER

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Disclaimer: ALL WORDING, EXCEPT "BRINKHOFF'S NO.1" AND "FRITZ BRINKHOFF"

Lining and Stippling: THE LINING AND/OR STIPPLING SHOWN ON THE MARK ARE A FEATURE OF THE MARK AND DO NOT REPRESENT COLOR.

Translation: "WE BREW THIS FINE MILDLY FLAVORED BEER FOLLOWING THE BEST FORMULA OF OUR FIRST BREWMASTER, FRITZ BRINKHOFF".

Design Search Code(s):

02.01.38 - Aprons, men wearing, excluding bakers, butchers, chefs; Men wearing aprons, excluding bakers, butchers, chefs; Merchants (men); Store clerks (men)

05.07.02 - Bundles, grain; Haystacks; Stalks (grain)

05.07.25 - Corn, kernel; Grass seed; Popcorn, unpopped

20.03.10 - Alcohol bottle labels; Bottles, labels for alcohol bottles; Labels, alcohol bottles

24.05.01 - Circular or elliptical seals; Seals, circular or elliptical

Prior Registration Number(s):

1152605

Foreign Registration Number: 1071365

Foreign Registration Date: 1984-12-11

Country: Fed Rep Germany

Foreign Expiration Date: 1994-05-03

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown

near the top of this page.

2007-10-06 - Canceled Section 8 (10-year)/Expired Section 9
2006-09-26 - Case File In TIGRS
1993-02-11 - Section 8 (6-year) accepted & Section 15 acknowledged
1992-11-09 - Section 8 (6-year) filed
1986-12-30 - Registered - Principal Register
1986-10-07 - Published for opposition
1986-09-07 - Notice of publication
1986-06-06 - Approved for Pub - Principal Register (Initial exam)
1986-05-27 - Examiner's amendment mailed
1985-11-04 - Communication received from applicant
1986-05-14 - Assigned To Examiner
1985-10-16 - Non-final action mailed
1985-10-10 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

MICHAEL J. STRIKER

Correspondent

MICHAEL J. STRIKER
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NEW YORK, NEW YORK 10017

Domestic Representative

MICHAEL J. STRIKER

Exhibit 5

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:06:14 ET

Serial Number: 73600503 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1425876

Mark (words only): HANS BRINKER

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2007-10-27

Filing Date: 1986-05-23

Transformed into a National Application: No

Registration Date: 1987-01-20

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2006-11-13

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. TURKSTRA B.V.

Address:

TURKSTRA B.V.

P.O. BOX 3

ZAANDAM

Netherlands

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Netherlands

GOODS AND/OR SERVICES

International Class: 030

Class Status: Section 8 - Cancelled
CHOCOLATE CANDY
Basis: 1(a)
First Use Date: 1986-03-20
First Use in Commerce Date: 1986-03-20

ADDITIONAL INFORMATION

Prior Registration Number(s):
1367970

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-10-27 - Canceled Section 8 (10-year)/Expired Section 9
2006-11-13 - Case File In TIGRS
2003-04-15 - TEAS Change Of Correspondence Received
1992-05-18 - Section 8 (6-year) accepted
1992-03-19 - Section 8 (6-year) and Section 15 Filed
1987-01-20 - Registered - Principal Register
1986-10-28 - Published for opposition
1986-09-28 - Notice of publication
1986-08-25 - Approved for Pub - Principal Register (Initial exam)
1986-08-11 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
HAROLD TRAUB

Correspondent
Bruce S. Londa
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Phone Number: 212-808--0700
Fax Number: 212-808-0844

Domestic Representative
HAROLD TRAUB

Exhibit 6

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:07:39 ET

Serial Number: 74638259 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1949013

Mark

WILLIAN
BRINKS
HOFER
GILSON
& LIONE

(words only): WILLIAN BRINKS HOFER GILSON & LIONE

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2006-10-21

Filing Date: 1995-02-23

Transformed into a National Application: No

Registration Date: 1996-01-16

Register: Principal

Law Office Assigned: LAW OFFICE 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 1998-03-30

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. WILLIAN BRINKS HOFER GILSON & LIONE

Address:

WILLIAN BRINKS HOFER GILSON & LIONE

NBC Tower, Suite 3600 455 North Cityfront Plaza Drive
Chicago, IL 606115500
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Illinois

GOODS AND/OR SERVICES

International Class: 042

Class Status: Section 8 - Cancelled

providing intellectual property and technology-related legal services in the fields of patent, trademark, copyright, unfair competition, trade secret, entertainment, sports, licensing, franchising and antitrust matters

Basis: 1(a)

First Use Date: 1994-12-06

First Use in Commerce Date: 1994-12-06

ADDITIONAL INFORMATION

Lining and Stippling: The drawing is lined for the color red.

Design Search Code(s):

26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-10-21 - Canceled Section 8 (10-year)/Expired Section 9

1998-02-14 - Section 7 request abandoned

1997-04-21 - Post Registration action mailed - Section 7

1996-10-04 - Section 7 amendment filed

1996-01-16 - Registered - Principal Register

1995-10-24 - Published for opposition

1995-10-24 - Published for opposition

1995-09-22 - Notice of publication

1995-07-20 - Approved for Pub - Principal Register (Initial exam)

1995-07-12 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Colleen C. Butler

Correspondent

Colleen C. Butler

WILLIAN BRINKS HOFER GILSON & LIONE

P. O. Box 10395

Chicago, IL 60610

Exhibit 7

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:08:36 ET

Serial Number: 75274661 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2207619

Mark



(words only): BRINK

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2009-07-04

Filing Date: 1997-04-14

Transformed into a National Application: No

Registration Date: 1998-12-01

Register: Principal

Law Office Assigned: LAW OFFICE 104

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-08-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. THULE CANADA HOLDING LLC

Address:
THULE CANADA HOLDING LLC

32451 AND 32501 DEQUINDRE ROAD
MADISON HEIGHTS, MI 48071
United States

Legal Entity Type: Limited Liability Company

State or Country Where Organized: (NOT AVAILABLE)

GOODS AND/OR SERVICES

International Class: 012

Class Status: Section 8 - Cancelled

tow bars, towing hitches, trailer hitches for vehicles, trailer hitch carriers and hitch components, namely, trailer balls, ball mounts, draw bars, ball mount adapters, couplings, pintle hooks, pintle hook adapters, lunette eyes, stabilizers, base plates, tongue jacks, safety chains, hitch pins, receiver covers, chain clips, tow hooks, hitch locks, ball covers, and coupler locks

Basis: 1(a)

First Use Date: 1996-10-00

First Use in Commerce Date: 1996-10-00

ADDITIONAL INFORMATION

Design Search Code(s):

26.11.02 - Plain single line rectangles; Rectangles (single line)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-07-04 - Canceled Section 8 (10-year)/Expired Section 9

2009-01-03 - Notice Of Design Search Code Mailed

2007-08-01 - Case File In TIGRS

2006-12-20 - Automatic Update Of Assignment Of Ownership

2006-03-31 - Section 8 (6-year) accepted & Section 15 acknowledged

2006-02-24 - PAPER RECEIVED

2006-01-27 - Section 7 correction issued

2005-09-30 - Section 7 amendment filed

2005-09-30 - PAPER RECEIVED

2005-08-26 - Post Registration action mailed Section 8 & 15

2005-08-26 - Assigned To Paralegal

2004-11-30 - Section 8 (6-year) and Section 15 Filed

2004-11-30 - TEAS Section 8 & 15 Received

1998-12-01 - Registered - Principal Register

1998-09-17 - Allowed for Registration - Principal Register (SOU accepted)

1998-08-27 - Statement Of Use Processing Complete

1998-08-13 - Use Amendment Filed

1998-06-09 - NOA Mailed - SOU Required From Applicant

1998-03-17 - Published for opposition

1998-02-13 - Notice of publication

1997-12-10 - Approved For Pub - Principal Register

1997-12-04 - Examiner's amendment mailed

1997-11-25 - Assigned To Examiner

1997-11-21 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

MICHAEL B STEWART

Correspondent

MICHAEL B STEWART
RADER FISHMAN & GRAUER PLLC
39533 WOODWARD AVE STE 140
BLOOMFIELD HILLS MI 48304

Domestic Representative

Michael B. Stewart

Exhibit 8

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:08:49 ET

Serial Number: 75274662 Assignment Information Trademark Document Retrieval

Registration Number: 2207620

Mark (words only): BRINK

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2009-07-04

Filing Date: 1997-04-14

Transformed into a National Application: No

Registration Date: 1998-12-01

Register: Principal

Law Office Assigned: LAW OFFICE 104

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-07-31

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. THULE CANADA HOLDING LLC

Address:

THULE CANADA HOLDING LLC
32451 AND 32501 DEQUINDRE ROAD
MADISON HEIGHTS, MI 48071
United States

Legal Entity Type: Limited Liability Company

State or Country Where Organized: (NOT AVAILABLE)

GOODS AND/OR SERVICES

International Class: 012

Class Status: Section 8 - Cancelled

tow bars, towing hitches, trailer hitches for vehicles, trailer hitch carriers and hitch components, namely, trailer balls, ball mounts, draw bars, ball mount adapters, couplings, pintle hooks, pintle hook adapters, lunette eyes, stabilizers, base plates, tongue jacks, safety chains, hitch pins, receiver covers, chain clips, tow hooks, hitch locks, ball covers, and coupler locks

Basis: 1(a)**First Use Date:** 1996-10-00**First Use in Commerce Date:** 1996-10-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-07-04 - Canceled Section 8 (10-year)/Expired Section 9

2007-07-31 - Case File In TICRS

2006-12-20 - Automatic Update Of Assignment Of Ownership

2006-04-05 - Section 8 (6-year) accepted & Section 15 acknowledged

2006-02-24 - PAPER RECEIVED

2006-01-27 - Section 7 correction issued

2005-09-30 - Section 7 amendment filed

2005-09-30 - PAPER RECEIVED

2005-08-26 - Post Registration action mailed Section 8 & 15

2005-08-26 - Assigned To Paralegal

2004-11-30 - Section 8 (6-year) and Section 15 Filed

2004-11-30 - TEAS Section 8 & 15 Received

1998-12-01 - Registered - Principal Register

1998-09-17 - Allowed for Registration - Principal Register (SOU accepted)

1998-08-27 - Statement Of Use Processing Complete

1998-08-13 - Use Amendment Filed

1998-06-09 - NOA Mailed - SOU Required From Applicant

1998-03-17 - Published for opposition

1998-02-13 - Notice of publication

1997-12-10 - Approved For Pub - Principal Register

1997-12-04 - Examiner's amendment mailed

1997-11-21 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

MICHAEL B STEWART

Correspondent

MICHAEL B STEWART
RADER FISHMAN & GRAUER PLLC
39533 WOODWARD AVE STE 140
BLOOMFIELD HILLS MI 48304

Domestic Representative

Michael B. Stewart

Exhibit 9

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:08:57 ET

Serial Number: 75652933 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2343069

Mark (words only): ON THE BRINK

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2007-01-20

Filing Date: 1999-02-25

Transformed into a National Application: No

Registration Date: 2000-04-18

Register: Principal

Law Office Assigned: LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2006-04-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Lexman Ltd.

Address:

Lexman Ltd.

Zephyr House Mary StreetP. O. Box 709

Grand Cayman

Cayman Islands

Legal Entity Type: Corporation

State or Country of Incorporation: Cayman Islands

GOODS AND/OR SERVICES

International Class: 025

Class Status: Section 8 - Cancelled

WEARING APPAREL, NAMELY, SWEATERS, MEN'S COORDINATED FASHION TOPS AND BOTTOMS, BLAZERS, JACKETS, SUIT COATS, OVERCOATS, TOPCOATS, JEANS, NECKTIES AND SOCKS

Basis: 1(a)

First Use Date: 1990-12-00

First Use in Commerce Date: 1990-12-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-01-20 - Canceled Section 8 (6-year)

2006-04-18 - Case File In TIGRS

2000-04-18 - Registered - Principal Register

2000-01-25 - Published for opposition

1999-12-23 - Notice of publication

1999-11-22 - Approved for Pub - Principal Register (Initial exam)

1999-08-16 - Non-final action mailed

1999-08-09 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

ANDREW BAUM

Correspondent

ANDREW BAUM

DARBY & DARBY P.C.

805 THIRD AVENUE

NEW YORK, NY 10022

Domestic Representative

DARBY & DARBY P.C.

Exhibit 10

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:09:05 ET

Serial Number: 75556806 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2525512

Mark (words only): BRINKER CAPITAL VARIABLE ANNUITY

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2008-10-04

Filing Date: 1998-09-22

Transformed into a National Application: No

Registration Date: 2002-01-01

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-04-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. American General Life Insurance Company

Address:

American General Life Insurance Company
2727-A Allen Parkway
Houston, TX 77019
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Texas

GOODS AND/OR SERVICES

International Class: 036

Class Status: Section 8 - Cancelled

Life insurance services, namely, the underwriting and administration of private placement variable annuity contracts

Basis: 1(a)

First Use Date: 2000-08-00

First Use in Commerce Date: 2000-08-00

ADDITIONAL INFORMATION

Disclaimer: "CAPTIAL VARIABLE ANNUITY"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-10-04 - Canceled Section 8 (6-year)

2007-04-18 - Case File In TIGRS

2002-01-01 - Registered - Principal Register

2001-08-08 - Allowed for Registration - Principal Register (SOU accepted)

2001-08-08 - Assigned To Examiner

2001-04-04 - Assigned To Examiner

2001-03-23 - Statement Of Use Processing Complete

2001-03-01 - Use Amendment Filed

2001-01-04 - Extension 2 granted

2000-10-26 - Extension 2 filed

2000-06-05 - Extension 1 granted

2000-04-12 - Extension 1 filed

1999-10-26 - NOA Mailed - SOU Required From Applicant

1999-08-03 - Published for opposition

1999-07-02 - Notice of publication

1999-04-29 - Approved For Pub - Principal Register

1999-04-12 - Examiner's amendment mailed

1999-03-31 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

DEBORAH L. BENSON

Correspondent

DEBORAH L. BENSON

HINCKLEY ALLEN & SNYDER LLP

28 STATE STREET

BOSTON, MA 02109-1775

Exhibit 11

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:09:18 ET

Serial Number: 76327780 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2637752

Mark (words only): BRINKLEY

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2009-05-23

Filing Date: 2001-10-22

Transformed into a National Application: No

Registration Date: 2002-10-15

Register: Supplemental

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2008-05-30

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. JAKKS Pacific, Inc.

Address:

JAKKS Pacific, Inc.
22619 Pacific Coast Highway Suite 250
Malibu, CA 90265
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 028

Class Status: Section 8 - Cancelled
toys, namely dolls and doll accessories
Basis: 1(a)
First Use Date: 2001-11-13
First Use in Commerce Date: 2001-11-13

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-05-23 - Canceled Section 8 (6-year)
2009-03-05 - Attorney Revoked And/Or Appointed
2009-03-05 - TEAS Revoke/Appoint Attorney Received
2008-05-30 - Case File In TICRS
2004-05-18 - TEAS Change Of Correspondence Received
2002-10-15 - Registered - Supplemental Register
2002-07-08 - APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER
2002-07-03 - Amendment to Use approved
2002-06-28 - Amendment To Use Processing Complete
2002-06-14 - Use Amendment Filed
2002-06-14 - Communication received from applicant
2002-01-28 - Non-final action mailed
2002-01-22 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Larry Miller

Correspondent

Larry Miller

Feder Kaszovitz LLP

845 Third Avenue, 11th Floor

New York NY 10022

Phone Number: 212-888-8200

Fax Number: 212-888-7776

Exhibit 12

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-02-03 17:09:26 ET

Serial Number: 76106695 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2640512

Mark (words only): BRINKSTER

Standard Character claim: No

Current Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2009-05-30

Filing Date: 2000-08-09

Transformed into a National Application: No

Registration Date: 2002-10-22

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2008-01-30

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. BRINKSTER COMMUNICATIONS CORPORATION

Address:

BRINKSTER COMMUNICATIONS CORPORATION
2875 SABRE STREET SUITE 200
VIRGINIA BEACH, VA 23452
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Virginia

GOODS AND/OR SERVICES

International Class: 042

Class Status: Section 8 - Cancelled

Computer services, namely, web site hosting for others; design and development of computer software for others and computer consultation services

Basis: 1(a)

First Use Date: 2000-07-12

First Use in Commerce Date: 2000-09-10

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-05-30 - Canceled Section 8 (6-year)

2008-01-30 - Case File In TICRS

2006-06-28 - Automatic Update Of Assignment Of Ownership

2006-06-21 - Attorney Revoked And/Or Appointed

2006-06-21 - TEAS Revoke/Appoint Attorney Received

2002-10-22 - Registered - Principal Register

2002-07-17 - Allowed for Registration - Principal Register (SOU accepted)

2002-07-17 - Assigned To Examiner

2002-07-16 - Statement Of Use Processing Complete

2002-06-25 - Use Amendment Filed

2002-06-25 - PAPER RECEIVED

2002-05-21 - NOA Mailed - SOU Required From Applicant

2001-08-14 - Extension Of Time To Oppose Received

2001-07-10 - Published for opposition

2001-06-27 - Notice of publication

2001-02-13 - Approved For Pub - Principal Register

2001-02-09 - Examiner's amendment mailed

2001-02-05 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Andrew S. Adams

Correspondent

Andrew S. Adams

Suite 310

2600 North Central Avenue

Phoenix AZ 85004

Phone Number: 7579614080

Fax Number: 6022643939

CERTIFICATE OF SERVICE

This is to certify that I have this day, February 9, 2011, caused to be served a copy of the foregoing APPLICANT BRINKMANN'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING APPLICANT'S PRIOR REGISTRATION AFFIRMATIVE DEFENSE by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Alan S. Cooper, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.



Susan Hwang